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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,152

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Ewald Schmon

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27317 7590 12/08/2009
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EXAMINER

JONAITIS, JUSTIN M

ART UNIT

PAPER NUMBER

3752

MAIL DATE

DELIVERY MODE

12/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/597,152	SCHMON ET AL.	
	Examiner	Art Unit	
	JUSTIN JONAITIS	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/17/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6 and 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the shaft being cylindrical with at least the beginning part of the shaft bordering the head part or the entire shaft extending conically to the head part must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 8, 10-12, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, it's unclear how the beginning part of the shaft (14) can be cylindrical and the beginning part of the shaft is conical. Further it's unclear how the entire shaft extends conically to the head part, yet is still cylindrical. Further clarification is not disclosed in the drawings, the only conical feature shown seems to go towards the point. For examination purposes the examiner assumes the shaft is generally cylindrical which extends conically to the point, not the head.

In regard to claim 10, applicant states, "according to Claim 12, one of claims 7-9." It's unclear what applicant means. Examiner assumes "one of claims 7-9" should be removed from the claim, and will examine as such.

In regard to claim 11, it's unclear what applicant means by the recess being outwardly extending beyond the (catch) edges means and further how any recess can extend past an outer surface and still be a recess. For examination purposes, examiner will not give the limitations of extending outward beyond the edges patentable weight.

In regard to claim 14, it's unclear how the head has a greater cross section than the preselected cross section of the interior space mounted to its other end. It's not clear what applicant is referring to using the statement, "the preselected cross section of the interior space mounted to its other end." For examination purposes examiner will not give patentable weight to the limitation of, "the head of greater cross section than the preselected cross section of the interior space mounted to its other end"

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-3, 5-6, 8-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub2006/0113409 to Camilleri et al. in view of 6,692,118 to Michele et al.

In re claim 1-3, 5-6, 8-12, and 14, Camilleri et al. discloses a paint reservoir system/kit for a spray gun including a container (body (7)) and a cover (cover (4)) that can be set on the container and having an attachment part ((duct (11)) for setting the paint reservoir system on the paint spray gun in order to gravity feed the paint from the container to the spray gun. Camilleri also discloses an element (valve duct (22)) formed in the wall of the container (bottom (3)), where the element defines a guidance surface that is used for engaging and guiding the pointed tool (plug (25)), the guidance surface being formed by an inside wall of a hollow cylinder (annular protrusion (24)) that stands perpendicular to the container wall (bottom (4)) and serves as the element. Camilleri et al. also discloses a pointed tool (plug (25)) having a shaft (surface

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of plug where annular grooves (29) and (30) are formed and the shaft is cylindrical bordering the head part and extends conically (Figures disclose lower end plug which closing pin (6) is attached has a conically extending section as it meets with the outer vertical walls of the plug), with a head part (located at upper edge (26)) with a greater cross section than the cross section of the rest of the plug and a point (closing pin (28)) with at least one recess (vent notches (31)) which is located between two circular catch edges (top and bottom edges of vent notches (31)) , where the recess extends in the longitudinal direction for approximately half the shaft length, the recess forming a ventilation channel when the tool is pushed into the opening far enough that the recess is located juxtaposed to the container wall bordering the ventilation opening (opening (6)). The plug being able to reside in one of two stable positions, the first stable position being partially withdrawn to enable ventilation of the container, and the second stable position with the head of the shaft in liquid-tight engagement with the hollow cylinder(plug (6) makes the structure liquid tight as the head of the shaft engages with the cylinder). However, Camilleri fails to disclose the plug puncturing a membrane which consists of a material with lower strength than the material of the container wall (in order to be punctured more easily) that is pierced by the pointed tool, where the element projects into the interior of the container.

Michele et al. teaches it's known to provide an element (sealing element (1)) which projects into the interior of the container with a membrane (piercing area (8)) that is more easily pierced than the container to be pierced by a pointed tool, in order to provide a fluid tight sealed device that is readily puncturable with a pointed tool when the device is intended to be used.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the element disclosed by Camilleri with a membrane capable of being pierced disclosed by Michele as such modification allows the device to be sealed prior to being used.

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7. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub2006/0113409 to Camilleri et al. in view of 6,692,118 to Michele et al. as applied to claims 12 and 14 above (respectively), and further in view of U.S. Patent #5,582,350 to Kosmyna et al.

Camilleri in view of Michele disclose the invention as described above but fail to disclose the pointed tool being attached to the cover by a tear-off bracket.

Kosmyna teaches it's known to use a tear-off bracket (tether (68) is capable of being torn off) to connect two components together.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tear-off bracket as disclosed by Kosmyna as such bracket would allow the tool to be retained by the container's cover until it's time of first usage where it could be torn off to create and plug the ventilation hole.

Response to Arguments

8. Applicant's arguments with respect to claims 1-3, 5-6, 8-15 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN JONAITIS/
Examiner, Art Unit 3752

/Dinh Q Nguyen/
Primary Examiner, Art Unit 3752